IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2667 of 1992

With

SPECIAL CIVIL APPLICATION No 3992 of 1992

With

SPECIAL CIVIL APPLICATION No 7400 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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DISTRICT RURAL DEVP. AGENCY

Versus

DILIP V UPADHYAY

Appearance:

1. Special Civil Application No. 2667 of 1992

MR HS MUNSHAW for Petitioner No. 1

..... for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 30/08/2001

COMMON ORAL JUDGEMENT

#. Since the common points of law and facts are involved in these petitions, the same are being disposed of by this common judgment.

#. The respondent workman had raised industrial dispute which was referred to the Labour Court, Rajkot and was numbered as Reference (LCR) No.1526 of 1985 for getting reinstatement and other consequential benefits. It is the case of the employee that, he was serving as Peon in the District Rural Development Agency, Rajkot since last five years under the Veterinary Officer of the District Rural Development Agency and his services were terminated with effect from 24.3.1985. At the time of termination, the respondent was not paid any notice pay or any compensation. It is also the say of the respondent that, after terminating his services, his juniors were continued in service. The said demands of the employee were resisted by the present petitioner on the ground that the respondent workman was relieved from service since Veterinary Hospital was closed. It is also the say of the employer that the concerned employee was Rojamdar and since the hospital was closed, his services were terminated.

#. The Labour Court, after appreciating the evidence on record, came to the conclusion that the concerned employee was serving continuously from 16.12.1981 till 23.3.1985 and was discharging his duties as Rojamdar Peon and that his services were terminated without any notice with effect from 24.3.1985. The Labour Court has also considered certain documentary evidence at Exh.25 and 26 and came to the conclusion that without following procedure of section 25-F of the Industrial Disputes Act, services of the workman were terminated.

#. Considering the facts and circumstances of the case as well as considering the fact that some other employees have also been absorbed in other department of the Agency, it was ordered that the respondent workman should be reinstated in service without back-wages. The said award is challenged by the District Rural Development Agency by way of filing Special Civil Application No.2667 of 1992. The respondent workman has also filed substantive petition being Special Civil Application No.3992 of 1992 insofar as the Labour Court denied the

back-wages to him. During pendency of these special civil applications, since there was no interim stay against the award of the Labour Court, the concerned employee had also initiated recovery proceedings and in that proceedings the order was passed to the effect that the employee is entitled to recover Rs.21,976/-, but that amount can be paid only subject to the order of the High Court in pending special civil application. The respondent workman again filed another application requesting the Labour Court to issue recovery certificate for the amount in question. Second application was rejected on the ground that in view of the earlier order, the concerned employee is entitled to certain amount which will be subject to the result of the special civil application. The said order is challenged by the employee by filing special civil application No.7400 of 1999.

#. At the time of hearing of these petitions, Mr.Munshaw, learned advocate for the petitioner-District Rural Development Agency, argued that services of the respondent workman were terminated since he was appointed as daily rated peon and since the hospital in which he was working was closed and that there was no other option, but to terminate his services.

#. It is required to be noted that the appointment of the concerned workman was in the Agency and it is not in dispute that other employees, who were also recruited in the Agency and who were also serving along with the respondent in the hospital in which the respondent was also working, are already absorbed in other department. It is the say of the petitioner that, other employees were permanent employees and the respondent was a temporary employee. The Labour Court, while appreciating the evidence on record, came to the conclusion that the petitioner has served continuously for more than three years and six months and without following procedure as provided under section 25-F, the services of the respondent workman were terminated. Considering the evidence on record, therefore, the Labour Court passed the order of reinstatement on original post without back-wages.

#. Considering the reasonings given by the Labour Court, it cannot be said that the Labour Court has committed any error of law or of jurisdiction in passing the said order. There is no interim stay since inception in this proceeding against the award of the Labour Court. Considering the facts and circumstances of the case, therefore, the award of the Labour Court is not required

to be interfered with by this Court. It will be open for the petitioner District Rural Development Agency to absorb the respondent workman on any other post available in the Agency. The award of the Labour Court is, therefore, confirmed. Similarly, it cannot be said that the Labour Court has committed any error in refusing the back-wages to the respondent-workman. Accordingly, both these petitions being Special Civil Application Nos.2667 and 3992 of 1992 are required to be dismissed and accordingly the same are dismissed. Rule is discharged with no order as to costs.

#. It is clarified that the concerned workman will be entitled to get reinstatement from the date of the award of the Labour Court and from the said date, whatever regular wages are required to be paid to the workman, shall be paid by the Agency.

#. So far as Special Civil Application No.7400 of 1999 is concerned, since the petition filed by the District Rural Development Agency being Special Civil Application No.2667 of 1992 is dismissed, this special civil application has became infructuous and is not required to be entertained. Accordingly the same is dismissed as having become infructuous. Rule is discharged with no order as to costs.

##. Since the proceedings are very old, the petitioner is directed to comply with this judgment within one month from today and whatever amount is required to be paid to the respondent workman, shall be paid by the aforesaid time.

(P.B.Majmudar,J)
(pathan)